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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THE STATE OF NEW YORK; and JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioners,

against

THE UNITED STATES OF AMERICA,

Respondent,

and

BEECHCRAFT EAST, INC.,

Respondent.

JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioner,

against

AIRCRAFT OWNERS AND PILOTS ASSOCIATION,

Respondent.

BRIEF OF AMICI CURIAE STATE OF ILLINOIS AND THIRTY-TWO OTHER STATES ON BEHALF OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Should a federal court, in determining the propriety of preliminary injunctive relief against state officers enforcing challenged state statutes, ignore the availability of adequate state law remedies and find irreparable harm *per se*?

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BRIEF OF AMICI CURIAE STATES OF ILLINOIS, ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, FLORIDA, HAWAII, IDAHO, INDIANA, KANSAS, LOUISIANA, MARYLAND, MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEVADA, NEW HAMPSHIRE, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, OHIO, PENNSYLVANIA, SOUTH DAKOTA, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, AND WYOMING ON BEHALF OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATEMENT OF INTEREST

This petition raises issues of fundamental importance to the ability of state governments to enforce and interpret their respective state statutes without undue interference from federal court preliminary injunctions. As thirty-three states, *amici curiae*, describe in their argument, the opinion of the Second Circuit Court of Appeals carries to an extreme the merger of law and equity, redefines the elements necessary to warrant injunctive relief, and unjustifiably intrudes upon precious precepts of federalism.

The opinion broadens the authority of federal courts to grant preliminary injunctions against state officers who enforce state statutes, and invites federal courts to disregard state adjudicatory processes and remedies. Since the Eleventh Amendment bars monetary damages against state officials in their official capacities in federal court, and the court of appeals holds that the unavailability of monetary relief in that forum establishes irreparable harm *per se*, significant traditional elements required for preliminary injunctive relief are removed. The traditional application of preliminary injunctive relief only to preserve the status quo, not overturn state statutes, is also dramatically altered. The removal of these long-standing roadblocks to preliminary injunctive relief subjects state officials to this extraordinary remedy in federal court upon the most minimal showings. Shockingly, the states' own citizens, as private defendants, would be in a better position to defeat preliminary injunction motions than state defendants.

The opinion also redefines the traditional notion of the Eleventh Amendment as a shield against excessive federal encroachment in state affairs. Instead, the opinion views

the Eleventh Amendment's constitutional protection as a sword to cut the states loose from their own respective institutional dispute settlement mechanisms. If this opinion stands, state governments will be required to defend their statutes in federal court either by acceding to the preliminary injunction or waiving their sovereign immunity. Traditional elements of equity jurisprudence and federalism guard against such stark choices and drastic results.

SUMMARY OF ARGUMENT

The opinion below overturns well-settled principles of equity jurisprudence and federalism. The opinion merges two separate and distinct elements necessary for preliminary injunctive relief against state officials in federal court, and removes the requirement of resorting to this extraordinary relief only to preserve the status quo. By holding that a federal court with equity jurisdiction may only consider the available federal remedies in determining whether adequate legal remedies exist, and that the absence of federal legal remedies causes irreparable harm *per se*, the opinion both imposes significant hardship on state officers enforcing state statutes and emasculates the efficacy of viable state law remedies. The opinion subjects state statutes to preliminary equitable relief on behalf of plaintiffs whose "irreparable injury" can be compensated or adjudicated through efficient state processes. To defeat a motion for preliminary injunction against its officials, the state is now faced with the untenable alternatives of waiving its sovereign immunity against monetary damages or acceding to the injunction against its challenged

statute. These choices subject states to preliminary relief which its own citizens, as defendants therein, would escape. The court's opinion thus removes the degree of protection the Eleventh Amendment has long afforded the states. More drastically, the court's opinion rewrites the Eleventh Amendment as an affirmative device to entrap the states within the jurisdictional ambit of the federal courts. The court's opinion, therefore, defies well-settled concepts of equity jurisprudence and federalism and must be reversed.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS' HOLDING THAT FEDERAL COURTS, IN CONSIDERING THE PROPRIETY OF PRELIMINARY INJUNCTIVE RELIEF, NEED NOT EXAMINE ADEQUATE STATE LAW REMEDIES OVERTURNS LONG-STANDING PRINCIPLES OF EQUITY JURISPRUDENCE AND FEDERALISM.

Federal courts have long declined from exercising their extraordinary equitable powers and refused to enter preliminary injunctions against state officials enforcing state statutes unless the challenger can show both 1) the inadequacy of a legal remedy and 2) irreparable harm. *O'Shea v. Littleton*, 414 U.S. 488, 499 (1974); *Younger v. Harris*, 401 U.S. 37, 43-44 (1971); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-07 (1959). A preliminary injunction should issue not to alter the situation, but rather to preserve the status quo. *University of Texas v. Camenisch*, 451 U.S. 390 (1981). "[T]he court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement

may be burdensome to the plaintiff." *Yakus v. United States*, 321 U.S. 414, 440 (1944).

The decision of the Second Circuit Court of Appeals in the present case effectively merges both separate and distinct elements for preliminary injunctive relief, and ignores their limited application. The court holds that if a legal remedy is unavailable in federal court, then irreparable harm is demonstrated *per se*.[1] (App. 5a). In federal court challenges to state officers enforcing state statutes, therefore, the Eleventh Amendment bar against monetary damages automatically warrants a finding of irreparable harm. This finding turns traditional notions of law and equity on their heads, removing the extraordinariness of federal injunctive intervention against state officials and statutes. A further anomaly is also created by the opinion: federal court preliminary injunctions will issue more frequently against state officials than against private defendants against whom monetary damages are available in that forum. The court's opinion, therefore, creates an unacceptable result. Instead of recognizing the Eleventh Amendment as a defense to limit states' exposure to actions for monetary relief in federal court, the opinion actually deploys the states' constitutional right of immunity from damages as a device to expand federal courts' equitable jurisdiction. That federal courts may grant prospective permanent injunctive relief against state officials (*Edelman v. Jordan*, 415 U.S. 651 (1974)) does not justify this radical extension to granting virtually automatic preliminary injunctive relief.[2] The opinion thus runs counter to

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[1] The record reflects that the United States neither moved for nor demonstrated irreparable harm. (App. 21a)

[2] Ironically, the U.S. government's position in this case, if upheld, may long return to haunt. As the Petition for Certiorari correctly points out, the court of appeals' opinion will subject the U.S. to an identical fate in challenges to its statutes. (Pet. at 15).

well-settled principles of federalism and previous decisions of this Court and other circuits.

This Court has long recognized that federal courts, in determining the appropriateness of preliminary injunctive relief, must consider the availability of all adequate legal remedies, state or federal. This Court need look no further than *Ex Parte Young*, 209 U.S. 123 (1907) for affirmation of this principle. In that case, this Court affirmed an injunction issued against a state official enforcing an allegedly unconstitutional state statute. Although the injunction was deemed proper, the Court did consider the adequacy of remedies at state law. The Court concluded that the state law remedy, a defense to a criminal prosecution, was too speculative, incomplete, and dilatory. *Id.* at 163-64.

This Court also affirmed the denial of an injunction against a state statute which did not cause irreparable injury in *Massachusetts State Grange v. Benton*, 272 U.S. 525 (1926). In that case, plaintiffs sought to enjoin a state statute as unconstitutional or pre-empted. Plaintiffs claimed that the statute jeopardized their claim to certain state aid and raised their labor costs. This Court rejected that argument, and declined to enter an injunction against enforcement of a state statute unless the case was "reasonably free from doubt and . . . [the injunction was] necessary to prevent great and irreparable injury." *Id.* at 527. This Court reasoned that the plaintiffs suffered minimal injury and emphasized the "very strict[ ]" rule that federal courts should refrain from enjoining state statutes which cause little harm. *Id.* at 528-29.

That federal courts, in considering preliminary injunctive relief, must consider the adequacy of state law remedies is also the teaching of *Matthews v. Rogers*, 284 U.S. 521 (1932). In that case, plaintiffs sought a federal

court injunction against the enforcement of an allegedly unconstitutional state tax statute.[3] A three-judge district court issued an injunction. This Court reversed. It reasoned that the "scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it." *Id.* at 525. The Court held that a federal court injunction was inappropriate since "the remedy at [state] law is plain, adequate, and complete, [and] the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be present . . ." *Id.* at 526.

Similarly, in *Commonwealth of Pennsylvania v. Williams*, 294 U.S. 176 (1935) the Court considered the adequacy of state law remedies in rejecting a complaint for a federal court injunction. In that case, the district court exercised its equitable jurisdiction and appointed a receiver in a shareholder dispute. The court of appeals affirmed. This Court reversed. The Court held that federal equitable jurisdiction was exercised improperly since the state statute "afford[ed] a complete, comprehensive, and economical scheme . . ." *Id.* at 179. It reasoned that injunctive relief was inappropriate since adequate state law remedies existed and "the exercise of jurisdiction involves an unnecessary interference by injunction with the lawful action of state officers." *Id.* at 185.

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[3] Significantly, *Matthews v. Rogers* was decided before the enactment of the Tax Injunction Act, 28 U.S.C. §1341. The Court relied on prevailing concepts of equity jurisprudence. The Court of Appeals therefore erred in narrowly reading the scope of § 1341.

In other contexts this Court has also considered the availability of state laws in determining the propriety of injunctive relief. In procedural due process cases, for example, this Court has recognized the inappropriateness of federal injunctive relief against certain state action where common law remedies exist. *Ingraham v. Wright*, 430 U.S. 651 (1977); *Paul v. Davis*, 424 U.S. 693 (1976). *Cf. Parratt v. Taylor*, 451 U.S. 627 (1981).

The Second Circuit's reliance in this case on *DiGiovanni v. Camden Fire Ins. Assn.*, 296 U.S. 64 (1935) and *Petroleum Exploration, Inc. v. Commissioner*, 304 U.S. 209 (1938) for the proposition that federal courts may consider the availability of only federal remedies in determining the propriety of equitable relief is misplaced. Those cases involve attempts to bootstrap federal jurisdiction by asserting claims for equitable relief to overcome the jurisdictional defects in the legal claims.[4] This Court rejected those attempts and stated that for jurisdictional purposes a federal court cannot extend its powers beyond its constitutional and statutory authority.

This Court's statements in *DiGiovanni* and *Petroleum Exploration* that a federal court may only assert jurisdiction to grant remedies in those instances federal law specifies thus arose in different contexts than the question presently at bar. The case at bar involves the consideration a federal court which possesses jurisdiction must give to legal remedies existing in other forums. The proper

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[4] *DiGiovanni* involved an attempt to overcome the jurisdictional defect of failing to plead the requisite dollar amount for diversity jurisdiction. *Petroleum Exploration* recognized that although the federal court possessed equity jurisdiction, it properly declined to exercise such power since traditional injunctive standards were not met. Many of the concerns underlying the federal court's refusal to exercise equitable jurisdiction in *Petroleum Exploration* were codified in the Johnson Act, 28 U.S.C. §1342.

focus in this case, in other words, is not whether a federal court must examine federal remedies to determine if its jurisdictional prerequisites are met; rather, the inquiry concerns the remedies a federal court may consider "adequate" in determining the propriety of granting equitable relief. As explained *supra*, federal courts which possess jurisdiction nonetheless conduct this further deliberation regarding whether to exercise their discretion and acknowledge jurisdictional limits to their power. This deliberative process is essential not only to avoid needless interference with the authority of state officers or the adjudicative ability of state courts, but also to preserve traditional precepts of federal court equity jurisdiction.

In the present case, the district court possessed federal question jurisdiction and therefore the consideration of *DiGiovanni* and *Petroleum Exploration*, *i.e.* whether the court has jurisdiction to award the remedy, does not apply. The question the court of appeals failed to consider was whether injunctive relief was appropriate in a federal court possessing jurisdiction when adequate state law remedies existed. A similar case challenging an Illinois statute, for example, would state a cause of action for damages under the Illinois Court of Claims Act, Ill. Rev. Stat. 1981., ch. 37, §439.1 *et seq.*[5] State courts, moreover, can capably dispose of the substantive issues and provide declaratory and injunctive relief.

The implications of the Second Circuit's opinion can hardly be overstated. At stake is the vitality not only of state statutory schemes and state adjudicatory processes, but also aged and revered concepts of federalism and equity jurisdiction. 1 POMEROY'S EQUITY JURISPRUDENCE §293,

[5] Virtually all, if not every, state has some mechanism to adjudicate and award monetary claims against state officials.

at 654 (5th ed. 1941). The court's opinion erroneously overturns equity's traditional reluctance to grant relief when adequate alternative remedies exist. By finding that the lack of an adequate federal legal remedy establishes irreparable harm *per se*, the opinion also removes any threshold requirement of irreparability.[6] The granting of preliminary injunctive relief against state officials will become virtually automatic. The opinion, in effect, elevates the legal remedy to the extraordinary, and promotes equitable relief as common.

The court's opinion, finally, destroys any pretense of a federalist republic by emasculating the efficacy of efficient and complete state law remedies and processes. The opinion uses the Eleventh Amendment bar against monetary relief against state governments as a lever to expand federal court equity jurisdiction. The court of appeals' use of the Eleventh Amendment as a sword to increase its equity jurisdiction, however, impermissibly intrudes upon traditional notions of equity practice, prior teachings of this Court, and fundamental precepts of

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[6] The record in this case indicates that plaintiffs suffered only a *de minimus* injury. The challenged statute affected only approximately 1% of Beechcraft's business (App. 21a). This Court has recognized that " '[m]ere injuries, however substantial in terms of money, time and energy necessarily expended, . . . are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.' " *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Other circuits also would not consider this damage irreparable, especially since monetary relief is available and viable. *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *Penn Central Company v. Buckley & Co.*, 415 F.2d 762, 763 (3rd Cir. 1969); *Tele-Controls, Inc. v. Ford Industries, Inc.*, 388 F.2d 48, 50 (7th Cir. 1967).

federalism. To defeat a preliminary injunction motion, states are now compelled either to waive their sovereign immunity or repeal the challenged statute.

CONCLUSION

For all the above reasons, the States of Illinois, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, as *amici curiae*, respectfully request this Court to grant this petition. This Court's guidance will correct the Second Circuit Court of Appeals' disruption of traditional federal court standards for entry of preliminary injunctive relief and assure proper deference to federalist concerns deep-rooted in our republic.

Respectfully submitted,

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